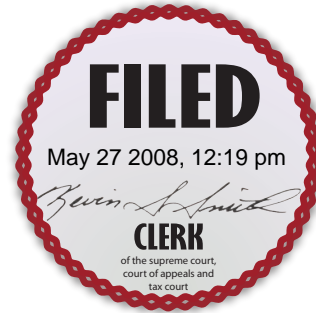


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

**SHAVAUGHN CARLOS WILSON-EL**  
Carlisle, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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SHAVAUGHN CARLOS WILSON-EL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 77A04-0704-CV-204

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APPEAL FROM THE SULLIVAN SUPERIOR COURT  
The Honorable Thomas E. Johnson, Judge  
The Honorable Ann Smith Mischler, Magistrate  
Cause No. 77D01-0703-SC-170

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**May 27, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Shavaughn Carlos Wilson-El appeals the dismissal of his complaint pursuant to the Three Strikes Law found at Ind. Code § 34-58-2-1.<sup>1</sup> Our Indiana Supreme Court recently held that statute violated the Open Courts clause of the Indiana Constitution, Article 1, Section 12.<sup>2</sup> *Smith v. Indiana Department of Correction, et al.*, 883 N.E.2d 802 (Ind. 2008). Accordingly, we reverse and remand for further proceedings.

### **PROCEDURAL HISTORY**

On March 13, 2007, Wilson-El sued, under Cause No. 77D01-0703-SC-170, the Indiana Department of Correction seeking compensation for lost property. On March 16, 2007, the trial court dismissed his complaint with prejudice pursuant to the Three Strikes Law.<sup>3</sup>

### **DISCUSSION AND DECISION**

Wilson-El argues the Three Strikes law violates Article 1, Section 12 of the Indiana Constitution by unfairly restricting his access to court. In *Smith*, our Indiana Supreme Court explained:

Indiana is unique in imposing a complete ban on filing based on the plaintiff's prior litigation. The Three Strikes Law sweeps with a broader brush than the law of any other United States jurisdiction because it

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<sup>1</sup> Ind. Code § 34-58-2-1 provides:

If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger of serious bodily injury (as defined in IC 35-41-1-25).

<sup>2</sup> That Section provides: "All courts shall be open; and every person, for injury done him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." Ind. Const. Art. 1, § 12.

<sup>3</sup> The Attorney General's Office filed a Notice of Non-Involvement and Motion to Correct Record. On April 29, 2008, we granted the motion and directed the Clerk to correct its docket by removing the Office of the Attorney General of the State of Indiana as attorney of record for the Appellees.

operates as an indiscriminate statutory ban, not merely a condition to access to the courts. The law bars claims purely on the basis of the plaintiff's prior activity without regard to the merits of the claims presented. By its own terms, such a ban on presenting any claims at all denied a "remedy by due course of law" for obvious wrongs that are otherwise redressable in court. The exception in the Three Strikes Law for claims of "immediate danger of serious bodily injury" does not cure this defect.

883 N.E.2d at 809-10 (footnote omitted). Accordingly, we reverse the dismissal of Wilson-El's complaints and remand to the trial court for further proceedings.

Reversed and remanded.

VAIDIK, J., and MATHIAS, J., concur.